



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
SNOW MOUNTAIN PROPERTIES, INC.  
FOR THE  
Snow Ridge Development Site  
46 Snow Mountain Lane, Fancy Gap, VA  
VAR10G790**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and Snow Mountain Properties, Inc., regarding property located at 46 Snow Mountain Lane, Fancy Gap, Virginia, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expired on June 30, 2019.
2. "2019 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was

issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2019 and which expires on June 30, 2024.

3. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. “Construction activity” means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
5. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. “Discharge” means the discharge of a pollutant.
8. “Discharge of a pollutant” means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. “Facility” or “Site” means the Snow Ridge Development, located at 46 Snow Mountain Lane, Fancy Gap, Carroll County, Virginia, from which discharges of stormwater associated with construction activity occur.
10. “General Permit Regulation” means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
11. “Land disturbance” or “land-disturbing activity” means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
12. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.

14. “Registration Statement” means a registration statement for coverage under the 2014 Permit or under the 2019 Permit.
15. “Snow Mountain Properties, Inc.” means Snow Mountain Properties, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Snow Mountain Properties, Inc. is a “person” within the meaning of Va. Code § 62.1-44.3.
16. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
17. “Stormwater” means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
18. “Stormwater management plan” means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
19. “SWPPP” means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
20. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
21. “Virginia Stormwater Management Act” means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
22. “Va. Code” means the Code of Virginia (1950), as amended.
23. “VAC” means the Virginia Administrative Code.
24. “VPDES” means Virginia Pollutant Discharge Elimination System.
25. “VSMP” means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines,

technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.

26. “VSMP authority” means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
27. “VSMP Regulations” means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
28. “Warning Letter” or “WL” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Snow Mountain Properties, Inc. operates Snow Ridge Development, located at 46 Snow Mountain Lane, Fancy Gap, in Carroll County, Virginia, which discharges stormwater associated with construction activities.
2. DEQ is the VSMP authority for the Site.
3. DEQ received a registration statement for coverage under the 2014 Permit from Snow Mountain Properties, Inc. on April 16, 2015; on January 18, 2018, Snow Mountain Properties, Inc. was granted coverage under the 2014 Permit (expired June 30, 2019). Snow Mountain Properties, Inc. was assigned registration number VAR10G790.
4. During inspections on July 30, 2019 and October 2, 2019, DEQ staff observed that land-disturbing activities exceeding one acre had occurred at the Site in an area subject to stormwater runoff. Conditions of the 2014 Permit had not been satisfied to allow termination of the permit coverage. Snow Mountain Properties, Inc. had not registered for coverage under the 2019 Permit, and no other certificate or permit had been issued for the discharge of stormwater from construction activities at the Site. Additionally, during the inspection on October 2, 2019, DEQ staff observed land disturbing activities outside of the 2014 Permit approved limits of disturbance. This land disturbance had occurred without application for, or issuance of, permit coverage for the activity.

Va. Code § 62.1-44.15:34(A) states: “A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1,

2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance.”

Va. Code §§ 62.1-44.15:24 and -44.15:34 define “land-disturbing activity” and describe regulated land-disturbing activities (including exemptions), respectively.”

5. During the inspection on October 2, 2019, DEQ staff observed several areas of new land disturbance which had no functional sediment trapping controls in place down gradient.

Regulation 9 VAC 25-840-40(4) states: “Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.”

Regulation 9 VAC 25-870-54(B) states: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”

6. During the inspections on July 30, 2019 and October 2, 2019, DEQ staff observed areas of concentrated flows down cut or fill slopes that were not adequately contained within a temporary or permanent slope drain, flume, or other structure to prevent erosion from occurring. During the inspection on October 2, 2019, DEQ staff observed areas of land disturbance that did not have stabilization measures applied within the required regulatory timeframes.

Regulation 9 VAC 25-840-40(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”

Regulation 9 VAC 25-840-40(8) states: “Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.”

Regulation 9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities...”

7. During the inspections on July 30, 2019 and October 2, 2019, DEQ staff observed that outlet protection and channel linings had not been installed or had not been installed in accordance with the approved stormwater management plan. Additionally, per the

approved stormwater management plan, the two culvert pipes traversing Tuscany Lane and the culvert pipe traversing Lake Joy Circle below the intersection with Tuscany Lane are required to have level spreaders installed at their respective points of discharge in order to convert the concentrated flows to a sheet flow condition. At the time of the inspections, none of the three (3) level spreaders required by the approved stormwater management plan had been installed, effecting the discharge of concentrated flows down fill slopes without containment within adequate conveyances.

Regulation 9 VAC 25-840-40(8) states: “Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.”

Regulation 9 VAC 25-840-40(11) states: “Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.”

Regulation 9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities....”

8. During the inspections on July 30, 2019 and October 2, 2019, DEQ staff observed that sediment control measures were not being properly maintained in an effective operating condition.

Regulation 9 VAC 25-840-60(A) states: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.”

Regulation 9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities....”

9. The Department has not issued coverage under any other permit or certificate to Snow Mountain Properties, Inc. for the land disturbing activities at the site.
10. Based on the results of the July 30, 2019 and October 2, 2019 inspections, the Board concludes that Snow Mountain Properties, Inc. violated Va. Code §§ 62.1-44.15:34(A), , and Regulations 9 VAC 25-840-40(1), 9 VAC 25-840-40(4), 9 VAC 25-840-40(8), 9 VAC 25-840-40(11), 9 VAC 25-840-60(A), and 9 VAC 25-870-54(B), as described in paragraphs C(4) through C(8) of this Order.

11. SWRO issued a Warning Letter and a Notice of Violation for the violations noted above as follows: WL-027-0719-SC, issued August 5, 2019; and NOV-011-1019-SC, issued October 25, 2019.
12. On October 29, 2019, Snow Mountain Properties, Inc. submitted to DEQ an electronic response to the Notice of Violation.
13. On November 13, 2019, DEQ staff met with representatives of Snow Mountain Properties, Inc. to discuss the violations.
14. On November 25, 2019, DEQ received a registration statement from Snow Mountain Properties, Inc. for a permit modification to increase the total area of land disturbance. Information was sent by DEQ electronically to Snow Mountain Properties, Inc. advising that Snow Mountain Properties, Inc. would need to apply for re-issuance of coverage under the 2019 Permit prior to modifying the permit.
15. On December 5, 2019, DEQ received a 2019 registration statement from Snow Mountain Properties, Inc. for re-issuance of coverage under the 2019 Permit for the land-disturbing activities previously approved and permitted under the 2014 Permit. Coverage under the 2019 Permit was subsequently re-issued on January 7, 2020.
16. In order for Snow Mountain Properties, Inc. to complete its return to compliance, DEQ staff and Snow Mountain Properties, Inc. have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders Snow Mountain Properties, Inc., and Snow Mountain Properties, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$1,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Snow Mountain Properties, Inc. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, Snow Mountain Properties, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Snow Mountain Properties, Inc. for good cause shown by Snow Mountain Properties, Inc., or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. NOV-011-1019-SC dated October 25, 2019 and in Warning Letter No. WL-027-0719-SC dated August 5, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Snow Mountain Properties, Inc. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Snow Mountain Properties, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Snow Mountain Properties, Inc. declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Snow Mountain Properties, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.



8. Snow Mountain Properties, Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Snow Mountain Properties, Inc. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Snow Mountain Properties, Inc. shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Snow Mountain Properties, Inc. Nevertheless, Snow Mountain Properties, Inc. agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Snow Mountain Properties, Inc. has completed all of the requirements of the Order;
  - b. Snow Mountain Properties, Inc. petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Snow Mountain Properties, Inc..

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Snow Mountain Properties, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Snow Mountain Properties, Inc. and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Snow Mountain Properties, Inc. certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Snow Mountain Properties, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Snow Mountain Properties, Inc.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Snow Mountain Properties, Inc. voluntarily agrees to the issuance of this Order.

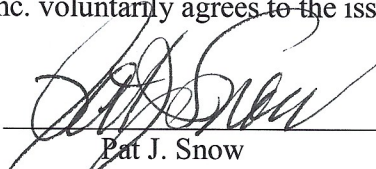
And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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Jeffrey L. Hurst, Regional Director  
Department of Environmental Quality

Consent Order  
Snow Mountain Properties, Inc., Snow Ridge Development  
VAR10G790  
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Snow Mountain Properties, Inc. voluntarily agrees to the issuance of this Order.

Date: March 23, 21 By: , President  
Pat J. Snow (Title)  
Snow Mountain Properties, Inc.

## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **1. Unpermitted Discharge**

- a.
- (i) Snow Mountain Properties, Inc. shall submit a revised 2019 VSMP permit registration statement to DEQ in order to modify the re-issued 2019 Permit coverage to include the unpermitted land disturbing activities, as described in paragraph (b) of this section and in paragraph C(4) of this Order, by June 1, 2021. Snow Mountain Properties, Inc. shall be responsible for payment of any modification fees and any permit fee balances, where applicable, that are assessed by the Department.

-OR-

- (ii) Snow Mountain Properties, Inc. shall submit a new 2019 VSMP permit registration statement to DEQ in order to acquire separate 2019 Permit coverage for the unpermitted land disturbing activities, as described in paragraph (b) of this section and in paragraph C(4) of this Order, by June 1, 2021. Snow Mountain Properties, Inc. shall be responsible for payment of any permit fees that are assessed by the Department.
- b.
- (i) In accordance with the requirements of Part II of the 2019 Permit, Snow Mountain Properties, Inc. shall prepare a stormwater management plan modification encompassing those unpermitted land disturbing activities located outside of the re-issued 2019 Permit approved limits of disturbance and shall submit the stormwater management plan modification to DEQ by June 1, 2021 for its review and approval.

-OR-

- (ii) In accordance with Va. Code § 62.1-44.15:34(A), Snow Mountain Properties, Inc. shall prepare a new stormwater management plan encompassing those unpermitted land disturbing activities located outside of the re-issued 2019 Permit approved limits of disturbance and shall submit the stormwater management plan to DEQ by June 1, 2021 for its review and approval.
- c. Snow Mountain Properties, Inc. shall respond to any DEQ comments regarding the stormwater management plan modification or new stormwater management plan within 30 days from the date of the DEQ comments.

- d. During the term of this Order, should any amendment to the SWPPP be required under Part II(C) of the 2019 Permit, Snow Mountain Properties, Inc. shall submit such amendment to DEQ within 10 days of the date of the signed amendment for review and approval.
- e. Snow Mountain Properties, Inc. shall respond to any DEQ comments regarding any amendment to the SWPPP within 10 days from the date of the DEQ comments.
- f. Upon DEQ approval, Snow Mountain Properties, Inc. shall immediately implement the approved stormwater management plan and any approved amended, modified, or updated stormwater management plan.

**2. Plan and Schedule of Corrective Action**

- a. Snow Mountain Properties, Inc. shall, within 14 days of the effective date of this Order, achieve consistent compliance with: 1) application of functional sediment trapping controls down gradient of new areas of land disturbance; 2) installation of temporary or permanent slope drains, flumes, or other structures to prevent erosion from occurring on cut or fill slopes; 3) application of stabilization measures within the required regulatory timeframes; 4) installation of outlet protection and channel linings in accordance with the approved stormwater management plan; 5) installation of the three (3) level spreaders in accordance with the approved stormwater management plan; and 6) provision of proper maintenance of erosion and sediment control measures in an effective operating condition.
- b. Snow Mountain Properties, Inc. shall submit a final report documenting completion of corrective actions within 10 days of completion of said corrective actions.

**3. DEQ Contact**

Unless otherwise specified in this Order, Snow Mountain Properties, Inc. shall submit all requirements of Appendix A of this Order to:

Jonathan M. Chapman  
Enforcement Specialist  
Virginia DEQ  
Southwest Regional Office  
355-A Deadmore Street  
Abingdon, Virginia 24210  
(276) 525-2557  
[jonathan.chapman@deq.virginia.gov](mailto:jonathan.chapman@deq.virginia.gov)